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SURGICAL INSTRUMENT SERVICE COMPANY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.

Plaintiff/Counter-Defendant,

v.

INTUITIVE SURGICAL, INC.,

Defendant/Counterclaimant.

Case No. 3:21-cv-03496-VC

Honorable Vince Chhabria

**DECLARATION OF JOSHUA VAN
HOVEN IN SUPPORT OF PLAINTIFF
SURGICAL INSTRUMENT SERVICE
COMPANY, INC.'S OPPOSITION TO
INTUITIVE'S MOTION FOR
SUMMARY JUDGMENT AND REPLY
IN SUPPORT OF ITS MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Hearing: June 8, 2023

Time: 10 AM PT

Courtroom: Courtroom 5, 17th Floor

Judge: The Honorable Vince Chhabria

Complaint Filed: May 10, 2021

1 I, JOSHUA VAN HOVEN, declare as follows:

2 I am an attorney at the law firm of MCCAULLEY LAW GROUP LLC, attorneys for
3 Plaintiff SURGICAL INSTRUMENT SERVICE COMPANY, INC. (“SIS”) in this matter. I
4 have personal knowledge of the matters set forth herein, unless otherwise noted.

5 1. Attached as Exhibit 1 is a true and correct copy of Exhibit 8 of the Deposition of Bob
6 DeSantis, which was taken on May 27, 2021, which was produced by Intuitive in case No.
7 8:20-CV-02274, and bates-labeled as Intuitive-00278203 – Intuitive-00278234.

8 2. Attached as Exhibit 2 is a true and correct copy of a February 15, 2018 e-mail from
9 Joseph Fridlin, which was produced by Intuitive in this case and bates-labeled as Intuitive-
10 00113020.

11 3. Attached as Exhibit 3 is a true and correct copy of an e-mail chain culminating in a
12 November 30, 2018 e-mail from Ralph Wadensweiler to Grant Duque, which was produced
13 by Intuitive in this case and bates-labeled as Intuitive-00029346 – Intuitive-00029347.

14 4. Attached as Exhibit 4 is a true and correct copy of excerpts of the Deposition of Bob
15 DeSantis, which was taken on May 27, 2021, in case No. 8:20-CV-02274.

16 5. Attached as Exhibit 5 is a true and correct copy of Exhibit 13 of the Deposition of
17 Glenn Vavoso, which was taken on May 14, 2021, which was produced by Intuitive and bates-
18 labeled as Intuitive-00100409 – Intuitive-00100412.

19 6. Attached as Exhibit 6 is a true and correct copy of an article entitled “Medtronic’s
20 Hugo too similar to Intuitive’s surgical robot to displace the market incumbent: analysts”,
21 which was written by Nick Paul Taylor and published on April 5, 2023, printed from
22 [https://www.medtechdive.com/news/medtronics-hugo-too-similar-to-intuitive-robot-MDT-
23 ISR/646608/#:~:text=Medtronic's%20Hugo%20surgical%20robot%20is,according%20to%
24 20analysts%20at%20BTIG](https://www.medtechdive.com/news/medtronics-hugo-too-similar-to-intuitive-robot-MDT-ISR/646608/#:~:text=Medtronic's%20Hugo%20surgical%20robot%20is,according%20to%20analysts%20at%20BTIG).

25 7. Attached as Exhibit 7 is a true and correct copy of an article entitled “Intuitive faces
26 down the competition”, which was written by Elizabeth Cairns and published on February
27 22, 2022, and printed from [https://www.evaluate.com/vantage/articles/interviews/intuitive-
28 faces-down-competition](https://www.evaluate.com/vantage/articles/interviews/intuitive-faces-down-competition).

8. Attached as Exhibit 8 is a true and correct copy of an article entitled “What does J&J’s Ottawa delay mean for Intuitive and Medtronic? It’s complicated”, which was written by Ricky Zipp and published on October 28, 2021, and printed from <https://www.medtechdive.com/news/jj-ottava-delay-intuitive-surgical-medtronic-robotic-surgery/609090/#:~:text=Johnson%20%26%20Johnson's%20delay%20of%20its,healthcare%20giant%20as%20it%20seems.>

9. Attached as Exhibit 9 is a true and correct copy of Plaintiff’s Exhibit 240 of the 30(b)(1) Deposition of Grant Duque, which was taken on November 8, 2022, and which was produced by Intuitive in this case and bates-labeled as Intuitive-00027298.

10. Attached as Exhibit 10 is a true and correct copy of Plaintiff’s Exhibit 241 of the 30(b)(1) Deposition of Grant Duque, which was taken on November 8, 2022, which was produced by Intuitive in this case and bates-labeled as Intuitive-00027299 – Intuitive-00027303.

11. Attached as Exhibit 11 is a true and correct copy of the Expert Report of Amandeep Mahal, M.D., an SIS expert in this case, which is dated May 10, 2021.

12. Attached as Exhibit 12 is a true and correct copy of excerpts of the 30(b)(1) Deposition of Grant Duque, which was taken on November 8, 2022.

13. Attached as Exhibit 13 is a true and correct copy of Exhibit 63A of the Deposition of Ryan Shaw, which was taken on October 19, 2022, which was produced by Intuitive in this case and bates-labeled as Intuitive-00114491 – Intuitive-00114494.

14. Attached as Exhibit 14 is a true and correct copy of Exhibit 64 of the Deposition of Ryan Shaw, which was taken on October 19, 2022, which was produced by Intuitive in this case and bates-labeled as Intuitive-01019873.

15. Attached as Exhibit 15 is a true and correct copy of a document entitled “Managing the Long Tail of *daVinci* Si” dated September 2016, which was produced by Intuitive in this case and bates-labeled as Intuitive-00795559 – Intuitive-00795610.

16. Attached as Exhibit 16 is a true and correct copy of Exhibit 59 of the Deposition of Ryan Shaw, which was taken on October 19, 2022, which was produced by Intuitive and

1 bates-labeled as Intuitive-00331265– Intuitive-00331266.

2 17. Attached as Exhibit 17 is a true and correct copy of excerpts of the 30(b)(1) Deposition
3 of Greg Posdal, which was taken on November 1, 2022.

4 18. Attached as Exhibit 18 is a true and correct copy of the Expert Report of T. Kim
5 Parnell, Ph.D., an SIS expert in this case, which is dated January 18, 2023.

6 19. Attached as Exhibit 19 is a true and correct copy of excerpts of the Deposition of
7 Kevin May, which was taken on November 3, 2022.

8 20. Attached as Exhibit 20 is a true and correct copy of excerpts of the Deposition of
9 Maxwell Meng, M.D., an Intuitive expert, which was taken on March 7, 2023.

10 21. Attached as Exhibit 21 is a true and correct copy of the Rebuttal Expert Report of T.
11 Kim Parnell, Ph.D., an SIS expert in this case, which is dated March 1, 2023.

12 22. Attached as Exhibit 22 is a true and correct copy of excerpts of the Deposition of
13 Robert Howe, an Intuitive expert, which was taken on February 24, 2023.

14 23. Attached as Exhibit 23 is a true and correct copy of excerpts of the 30(b)(6) Deposition
15 of Greg Posdal, which was taken on November 1, 2022.

16 24. Attached as Exhibit 24 is a true and correct copy of the Expert Report of Jean Sargent,
17 an SIS expert in this case, which is dated December 2, 2022.

18 25. Attached as Exhibit 25 is a true and correct copy of excerpts of the 30(b)(6) Deposition
19 of Keith R. Johnson, which was taken on October 27, 2022.

20 26. Attached as Exhibit 26 is a true and correct copy of excerpts of the 30(b)(6) Deposition
21 of Grant Duque, which was taken on November 8, 2022.

22 27. Attached as Exhibit 27 is a true and correct copy of excerpts of the Deposition of
23 Sharathchandra Somayaji, which was taken on November 4, 2022.

24 28. Attached as Exhibit 28 is a true and correct copy of excerpts of the Deposition of
25 Anthony McGrogan, which was taken on June 7, 2021 in case No. 8:20-CV-02274.

26 29. Attached as Exhibit 29 is a true and correct copy of excerpts of the Deposition of Dr.
27 T. Kim Parnell, a SIS expert, which was taken on March 10, 2023.

28 30. Attached as Exhibit 30 is a true and correct copy of an Instruments and Accessories

1 User Manual dated April 2014, which was produced by Intuitive in this case and bates-labeled
2 as Intuitive-00000501 – Intuitive-00000639.

3 31. Attached as Exhibit 31 is a true and correct copy of excerpts of the Deposition of Paul
4 D. Martin, Ph.D., an Intuitive expert, which was taken on March 16, 2023.

5 32. Attached as Exhibit 32 is a true and correct copy of the Rebuttal Expert Report of Kurt
6 Humphrey, an SIS expert in this case, which is dated February 13, 2023.

7 33. Attached as Exhibit 33 is a true and correct copy of Plaintiff's Exhibit 266 of the
8 30(b)(6) Deposition of Grant Duque, which was taken on November 8, 2022, and which was
9 produced by Intuitive in this case and bates-labeled as Intuitive-02068686.

10 34. Attached as Exhibit 34 is a true and correct copy of Plaintiff's Exhibit 267 of the
11 30(b)(6) Deposition of Grant Duque, which was taken on November 8, 2022, and which was
12 produced by Intuitive in this case and bates-labeled as Intuitive-02068695 – Intuitive-
13 0206897.

14 35. Attached as Exhibit 35 is a true and correct copy of Plaintiff's Exhibit 257 of the
15 30(b)(1) Deposition of Grant Duque, which was taken on November 8, 2022, which was
16 produced by Intuitive in this case and bates-labeled as Intuitive-01085683 – Intuitive-
17 01085685.

18 36. Attached as Exhibit 36 is a true and correct copy of Plaintiff's Exhibit 268 of the
19 30(b)(6) Deposition of Grant Duque, which was taken on November 8, 2022, which was
20 produced by Intuitive in this case and bates-labeled as Intuitive-02066979 – Intuitive-
21 02067059.

22 37. Attached as Exhibit 37 is a true and correct copy of excerpts of the Deposition of Ted
23 Claiborne, which was taken on November 21, 2022.

24 38. Attached as Exhibit 38 is a true and correct copy of Plaintiff's Exhibit 299 of the
25 Deposition of Ted Claiborne, which was taken on November 21, 2022, which was produced
26 by Intuitive in this case and bates-labeled as Intuitive-02070398.

27 39. Attached as Exhibit 39 is a true and correct copy of a PowerPoint presentation entitled
28 "Instrument eX: I&A Refurbishment Feasibility Update" dated January 30, 2017, which was

1 produced by Intuitive in this case and bates-labeled as Intuitive-00423534 – Intuitive-
2 00423578.

3 40. Attached as Exhibit 40 is a true and correct copy of Plaintiff’s Exhibit 249 of the
4 30(b)(1) Deposition of Grant Duque, which was taken on November 8, 2022, which was
5 produced by Intuitive in this case and bates-labeled as Intuitive-00967614 – Intuitive-
6 00967634.

7 41. Attached as Exhibit 41 is a true and correct copy of Plaintiff’s Exhibit 247 of the
8 30(b)(1) Deposition of Grant Duque, which was taken on November 8, 2022, which was
9 produced by Intuitive in this case and bates-labeled as Intuitive-00967510 – Intuitive-
10 00967542.

11 42. Attached as Exhibit 42 is a true and correct copy of a PowerPoint presentation entitled
12 “Core Instrument Strategy” dated September 05, 2019, which was produced by Intuitive in
13 this case and bates-labeled as Intuitive-00671209 – Intuitive-00671220.

14 43. Attached as Exhibit 43 is a true and correct copy of Plaintiff’s Exhibit 248 of the
15 30(b)(1) Deposition of Grant Duque, which was taken on November 8, 2022, which was
16 produced by Intuitive in this case and bates-labeled as Intuitive-00967609 – Intuitive-
17 00967613.

18 44. Attached as Exhibit 44 is a true and correct copy of an e-mail chain culminating in a
19 February 13, 2019 e-mail from Mario Lowe to multiple recipients, which was produced by
20 Intuitive in this case and bates-labeled as Intuitive-00214241 – Intuitive-00214244.

21 45. Attached as Exhibit 45 is a true and correct copy of excerpts of the Deposition of
22 Ronald L. Bair, Jr., which was taken on May 24, 2021 in case No. 8:20-CV-02274.

23 46. Attached as Exhibit 46 is a true and correct copy of excerpts of the Deposition of Dan
24 Jones, which was taken on November 10, 2022 in this case.

25 47. Attached as Exhibit 47 is a true and correct copy of an e-mail chain culminating in a
26 September 14, 2017 e-mail from Katie Scoville to Dirk Barten, which was produced by
27 Intuitive in this case and bates-labeled as Intuitive-00604054 – Intuitive-00604055.

28 48. Attached as Exhibit 48 is a true and correct copy of Exhibit 11 of the Deposition of

1 Bob DeSantis, which was taken on May 27, 2021, which was produced by Intuitive in case
2 No. 8:20-CV-02274 and bates-labeled as Intuitive-00566055 – Intuitive-00566082.

3 49. Attached as Exhibit 49 is a true and correct copy of the Rebuttal Expert Report of
4 Philip J. Phillips, an SIS expert in this case, which is dated March 1, 2023.

5 50. Attached as Exhibit 50 is a true and correct copy of an FDA Staff Manual Guides
6 entitled “Determination of Classification of Devices”, which is dated November 13, 2018,
7 and available from FDA’s website at <https://www.fda.gov/media/80114/download> via
8 <https://www.fda.gov/about-fda/staff-manual-guides/delegations-authority-volume-ii-1400> .

9 51. Attached as Exhibit 51 is a true and correct copy of the Expert Report of Philip J.
10 Phillips, an SIS expert in this case, which is dated December 2, 2022.

11 52. Attached as Exhibit 52 is a true and correct copy of a web archive of the Da Vinci
12 Instruments page of Intuitive’s website, accessible at
13 [https://web.archive.org/web/20220805113734/https://www.intuitive.com/en-us/products-](https://web.archive.org/web/20220805113734/https://www.intuitive.com/en-us/products-and-services/da-vinci/instruments)
14 [and-services/da-vinci/instruments](https://web.archive.org/web/20220805113734/https://www.intuitive.com/en-us/products-and-services/da-vinci/instruments), and which was retrieved on May 2, 2023.

15 53. Attached as Exhibit 53 is a true and correct copy of Plaintiff’s Exhibit 294 of the
16 Deposition of Dan Jones, which was taken on November 10, 2022, which was produced by
17 Intuitive in this case and bates-labeled Intuitive-00986535 – Intuitive-00986537.

18 54. Attached as Exhibit 54 is a true and correct copy of a Sales, License, and Service
19 Agreement dated December 7, 2018, which was produced by Intuitive in this case and bates-
20 labeled Intuitive-01807644 – Intuitive-01807658.

21 55. Attached as Exhibit 55 is a true and correct copy of excerpts of the Deposition of
22 Glenn Vavoso, which was taken on May 14, 2021 in case No. 8:20-CV-02274.

23 56. Attached as Exhibit 56 is a true and correct copy of excerpts of the 30(b)(1) Deposition
24 of Keith R. Johnson, which was taken on October 27, 2022.

25 57. Attached as Exhibit 57 is a true and correct copy of the second Rebuttal Expert Report
26 of Richard F. Bero, an SIS expert in this case, which is dated March 1, 2023.

27 58. Attached as Exhibit 58 is a true and correct copy of the Expert Report of Kurt
28 Humphrey, an SIS expert in this case, which is dated July 26, 2021.

1 59. Attached as Exhibit 59 is a true and correct copy of excerpts of the Deposition of Stan
2 Hamilton, which was taken on November 4, 2022.

3 60. Attached as Exhibit 60 is a true and correct copy of excerpts of the Deposition of
4 Clifton Parker, which was taken on October 25, 2022.

5 61. Attached as Exhibit 61 is a true and correct copy of an Intuitive Surgical Devices
6 Business Overview, dated October 29, 1995, and bates-labeled Intuitive-00595673 –
7 Intuitive-00595694.

8 62. Attached as Exhibit 62 is a true and correct copy of the Intuitive Surgical, Inc., Form
9 10-K for the fiscal year ended December 31, 2000.

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11 I declare under penalty of perjury that the foregoing is true and correct.

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13 EXECUTED the 4th day of May, 2023 in San Ramon, California.

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15 /s/ Joshua Van Hoven
16 Joshua Van Hoven
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